

**BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2022-52-E

Dominion Energy South Carolina,)	<u>COMMENTS ON BEHALF OF THE</u>
Incorporated's 2022 Annual Update on)	<u>UNITED STATES DEPARTMENT</u>
Demand Side Management Programs and)	<u>OF DEFENSE AND ALL OTHER</u>
Petition to Updated Rider)	<u>FEDERAL EXECUTIVE AGENCIES</u>

The United States Department of Defense and all other Federal Executive Agencies (“DoD/FEA”) hereby provides comments on Dominion Energy South Carolina, Incorporated’s 2022 Annual Update on Demand Side Management Programs and Petition to Update Rider. As part of its filing, Dominion Energy South Carolina, Inc. (“DESC” or “Company”) seeks to change the “OPT-OUT” applicability language. Currently, DESC’s “OPT-OUT” PROVISION allows customers to opt-out of its Demand Side Management (“DSM”) programs and costs if the customers meet the requirements set forth in either paragraph 1 or 2, in addition to the requirements in paragraphs 3-5. Currently, the first paragraph under the “OPT-OUT” PROVISION states that “Industrial customers as defined in Rate 23 are eligible to opt-out of DSM programs and costs.” In this case, the Company is seeking to change that applicability language in paragraph 1 to:

Industrial customers classified in the major industrial group of manufacturing with 10-14 or 20-39 as the first two digits of the Standard Industrial Classification [“SIC”] or 21 or 31-33 as the first two digits of the six digit North American Industry Classification System [“NAICS”] are eligible to opt-out of DSM programs and costs.

The Company characterizes this change as “simply a clarification for the benefit of customers and does not alter the application or operation of the opt-out provision in the DSM Rider.”¹ However, for those customers now eligible for service under Rate 23, this proposed change is substantive

¹ Id. at ¶50, p. 21.

and deserving of proper review and consideration. The appropriate revision to clarify the first criteria of the “OPT-OUT” PROVISION of the DSM Rider is: “Customers eligible for Rate 23 are eligible to opt-out of DSM programs and costs.” This proposed revision is consistent with the Commission’s determination in DESC’s last rate case in Docket No. 2020-125-E, Application of Dominion Energy South Carolina, Inc. for Adjustment of Rates and Charges. Instead, the Company seeks to limit the applicability of the “OPT-OUT” PROVISION by excluding certain Rate 23 eligible customers. Disparate treatment of customer/s within the same rate class in this way is discriminatory and is contrary to the change in the Rate 23 availability clause approved in Docket No. 2020-125-E.²

In the Company’s last rate case, DoD/FEA testified that the “availability language” in Rate 23 was subjective and unduly discriminatory. Prior to the last rate case, only “customers in the major industrial group of manufacturing with 10-14 or 20-39 as the first two digits of the Standard Industrial Classification or 21 or 31-33 as the first two digits of the six digit North American Industry Classification System” were able to take service under Rate 23.³ However, this Commission removed that subjective and discriminatory availability language in Order 2021-570, so that the availability language in Rate 23 now allows customers “...with an average annual load factor of 60% or higher based on On-Peak CP demand...” to take electric service under Rate 23.⁴

The Company’s proposed changes to the “OPT-OUT” PROVISION in its DSM Rider is a step backwards, as it applies that same subjective and unduly discriminatory limitation recently changed. DESC is seeking to reinstate the availability provision of Rate 23 prior to the change

² Order No. 2021-570, p. 104, found the following as just and reasonable: “16. The amendment of the language of DESC's Rate 23 tariff as provided in Order Exhibit No. 1, Settlement Agreement paragraph 18.”

³ See DESC's Notice of Change and Application for Increase in Rates and Charges, Exhibit A, page 40 (August 14, 2020)

⁴ Order No. 2021-570, Exhibit No. 1, Settlement Agreement paragraph 18.

approved in Docket No. 2020-125-E for application of the DSM-Rider opt-out. DoD-FEA previously argued in written testimony that this prior Rate 23 availability provision “is subjective and unduly discriminatory.”⁵ Furthermore, “[a] SIC or NAIC code for a customer does not determine how DESC’s costs are incurred.”⁶ Similarly, application of these same industrial codes to the DSM Rider “OPT-OUT” PROVISION availability does not objectively determine which large customers can economically self-invest in demand side management programs. DESC’s attempt to reinstate this subjective and arbitrary criterion for the DSM Rider “OPT-OUT” PROVISION adds another discriminatory feature, in that customers within the same rate class, Rate 23, will be treated disparately.

Following Commission approval of the new availability language for Rate 23, Fort Jackson attempted to exercise the “OPT-OUT” PROVISION within the DSM Rider as part of its migration to Rate 23, but DESC denied applicability of the opt-out for that customer based on its interpretation of the DSM rider. The Company now seeks to solidify its flawed interpretation in this filing. The Company is well aware that at least one customer believed that the opt-out provision was available to all Rate 23 customers, yet in its filing, DESC chose to ignore the effect its interpretation of the current tariff language has already had on customers. To characterize this attempted change as a “benefit of customers” is disingenuous and misleading.

BACKGROUND ON DESC’S “OPT-OUT” PROVISION

DESC, previously doing business as South Carolina Electric & Gas Company, first filed an Application for Approval of its Demand Side Management Plan Including a Demand Side Management Rate Rider and Portfolio of Energy Efficiency Programs (“DSM Application”) on June 30, 2009, in Docket No. 2009-261-E. Exhibit 2 of the DSM Application addresses the

⁵ Direct Testimony of Mark E. Garrett, Docket No. 2020-125-E, p. 78, line 20.

⁶ Surrebuttal Testimony of Mark E. Garrett, Docket No. 2020-125-E, p. 31, lines 2-3.

Company's original proposal for allowing large commercial and industrial customers to opt-out of DSM programs and rates. Nowhere in that application does the Company make reference to or limit the opt-out provisions to certain SIC/NAIC classifications. In fact, the language used by the Company in describing the opt-out included both large commercial and industrial customers and sought to limit the availability of the opt-out provision only by a customer's demand characteristics, and not end-user classification. Simply put, it was not the Company's original intent to limit the opt-out to only certain customers with specific SIC or NAICS codes. A review of intervenor testimony in Docket No. 2009-261-E does not provide even a single reference or proposal to limit the opt-out provision to industrial customers as defined by SIC/NAIC code. However, ultimately the opt-out eligibility was changed from the Company's original request of "Large Commercial and Industrial" customers to "Industrial customers as defined in Rate 23" as part of the "Opt-Out Settlement Agreement."⁷ At that time the Rate 23 tariff required a customer to conduct business under certain SIC and NAICS codes. The limitation of the opt-out was likely a negotiation tactic used to arrive at a settlement between intervenors representing the interests of industrial customers (South Carolina Energy Users Committee and CMC Steel South Carolina) and environmental groups (South Carolina Coastal Conservation League, Friends of the Earth, and Southern Environmental Law Center). For the Company to now request the Commission to order that certain SIC/NAICS codes are required in order for a customer to opt-out of the Company's DSM programs and costs, rather than allowing all customers eligible for Rate 23 is simply not sound regulatory practice.

Currently, customers seeking to opt-out of DESC's DSM programs and costs are also required to (1) represent that they have already implemented or will be implementing alternative

⁷ Order 2010-472, Approving SCE&G's Request for the Establishment and Approval of DSM Programs and Rate Rider, Docket No. 2009-261-E, July 15, 2010, page 2.

DSM programs and (2) not have accepted a DSM rebate from the Company for the past three years. To be clear, DoD/FEA is not challenging these other requirements. Additionally, DoD/FEA is not providing comment on those customers eligible to opt-out of DESC's DSM programs and costs under paragraph 2 of the "OPT-OUT" PROVISION.

REVIEW OF OTHER SOUTH CAROLINA ELECTRIC UTILITIES'

OPT-OUT PROVISIONS

Both Duke Energy Progress, LLC and Duke Energy Carolinas, LLC provide for non-discriminatory opt-out provisions. In Duke Energy Progress, LLC's Demand Side Management and Energy Efficiency Rider, it allows an opt-out for "[c]ommercial customers with annual consumption of 1,000,000 kWh or greater in the billing months of the prior calendar year and all industrial customers."⁸ In Duke Energy Carolinas, LLC's Energy Efficiency Rider, it allows an opt-out for "[c]ustomer's [whose] annual energy use is 1,000,000 kilowatt hours or greater in the billing months of the prior calendar year."⁹ To allow one large electric utility to unduly discriminate as to who can opt-out of its DSM programs when two other large electric utilities do not have similar discriminatory language results in the misfortune for those customers who happen to be in the service territory of the utility allowed to discriminate. This Commission should order DESC's "OPT-OUT" PROVISION to be consistent with the other large electric utilities in South Carolina's nondiscriminatory opt-out language.

DOD-FEA'S INVESTMENT AND COMMITMENT TO DEMAND SIDE MANAGEMENT

Unlike most commercial and industrial customers, energy efficiency improvements are not discretionary for federal government installations. The federal government is required by law and policy to continually invest in energy saving measures. A combination of federal statutes and

⁸ Duke Energy Progress, LLC Rider DSM/EE-13, Sheet 1 of 2.

⁹ Duke Energy Carolinas, LLC Energy Efficiency Rider, page 1 of 3.

Executive Orders require all federal agencies to continually invest in energy saving measures and technologies. For example, 42 U.S.C. § 8253(a)(1) required a 30 percent reduction in energy consumption per gross square foot of federal buildings between fiscal years 2006 and 2015. Furthermore, the Energy Independence and Security Act of 2007 requires energy efficiency for federal facilities and installations.¹⁰ Investment in energy efficiency by the federal government has been consistent regardless of the leadership's political affiliation. Executive Orders issued in the Obama and Trump Administrations required further reductions in federal building energy use.¹¹ Most recently, President Biden issued Executive Order 14057, "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability" on December 8, 2021¹², which continues to push federal agencies toward net-zero emissions, once again signaling the commitment by the federal government to invest in a clean, energy efficient future.

Potential concerns regarding the likelihood and level of investment in energy efficiency and conservation measures on the part of the federal government are easily addressed. For example, investments in Energy Savings Performance Contracts ("ESPC") are a notable indicator of commitment. As of Fiscal Year 2020, the federal government has spent \$7.8 billion in 438 ESPC projects for energy efficiency and renewable energy improvements. In three separate ESPC efforts, Fort Jackson invested \$19 million in 2001, \$6.6 million in 2007, and \$38 million in 2014. Similarly, Joint Base Charleston invested \$24 million in 2005, and \$15.4 million in 2018. The measures included in the ESPC contracts typically include lighting improvements, chiller improvements, building controls and automation, and water and sewer conservation measures.

¹⁰ 42 U.S.C. § 17131-17158 ("Energy Savings in Government and Public Institutions").

¹¹ See Executive Order 13693 of February 15, 2015, "Planning for Federal Sustainability in the Next Decade," 80 FR 15869; Executive Order 13834 of May 17, 2018, "Efficient Federal Operations," 83 FR 23771.

¹² Executive Order 14057 of December 8, 2021, "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability," 86 FR 70935.

The fundamental design of utility-administered DSM programs is to lower the barrier for participation and incentivize customers to invest in the “low hanging fruit,” i.e., those projects and measures that are easily cost-effective given information campaigns and rebates. The federal government frequently takes advantage of these types of initiatives, and utility rebates are typically included in the ESPC projects referenced above. However, after more than twenty years of continual investment in energy efficiency projects, some federal installations may no longer have significant opportunities in “low hanging fruit” projects. This doesn’t mean that the federal government will not continue to invest in energy saving measures, it simply means that the measures deployed to meet federal goals may require unique approaches and technologies that are no longer a good fit with utility DSM programs. Whether or not an installation elects to opt-out of DMS programs will depend on the type of energy projects that are in the best interest of the specific location given federal clean energy goals. If a federal customer is able to opt-out of a utility’s DSM programs and costs when the utility’s DSM programs are not a good fit for the federal customer, it would allow the federal customer to utilize those funds for investment in other energy saving initiatives in accordance with federal mandates and laws.

RELIEF SOUGHT

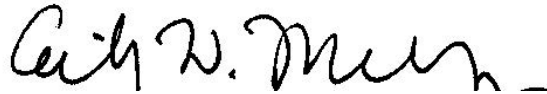
Wherefore, DoD/FEA recommends that the Commission:

1. Deny DESC’s proposed change to the “OPT-OUT” PROVISION applicability
2. Amend the first paragraph of the “OPT-OUT” PROVISION availability clause, so that it is clear that the option applies equally to all customers eligible for Rate 23 in a non-discriminatory manner. As set forth in DoD/FEA’s comments, the Commission could accomplish this by amending the current first paragraph of the DSM “OPT-OUT” PROVISION, so that it would read, “Customers eligible for Rate 23 are eligible to opt-out of DSM programs and costs.”

The Commission could also consider changing the “OPT-OUT” PROVISION in a manner consistent with Duke Energy Progress, LLC and Duke Energy Carolina, LLC’s opt-out provisions.

3. In the alternative, the Commission could bifurcate this narrow but substantive matter, without delaying consideration and approval of the other requested changes within the DSM Rider, and allow the filing of additional evidence by affected parties and set this matter for hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Emily W. Medlyn", with a horizontal line underneath.

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